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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

FRANCES C. PEDERSEN,  
Plaintiff,

vs.

HARTFORD INSURANCE COMPANY OF  
THE MIDWEST, a Connecticut corporation,  
Defendant.

**FILED**

CLERK, U.S. DISTRICT COURT  
August 9, 2004 (10:23am)  
DISTRICT OF UTAH

**ORDER DENYING MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT**

Case No. 2:01-CV-00398 PGC

These matters are before the court on defendant's motion for partial summary judgment on plaintiff's claim for intentional infliction of emotional distress. The court concludes that there are genuine issues as to material facts with regards to plaintiff's intentional infliction of emotional distress claim. Defendant is not entitled to partial summary judgment. The motion is hereby DENIED.

**BACKGROUND**

For purposes of resolving this motion, the court finds the following facts. On August 11, 1999, a tornado severely damaged plaintiff Frances C. Pedersen's home in Salt Lake City. Pedersen is an eighty-year-old widow. She was in her house when it was struck by the tornado. The defendant, Hartford Insurance Company of the Midwest ("Hartford"), received a call

regarding the damage to Pedersen's home on that same day.

According to Hartford, Pedersen's coverage included coverage of additional living expenses ("ALE") that resulted from losing the use of her home. ALE includes "any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living."<sup>1</sup> Hartford claims that David Trich, the independent GAB adjuster that Hartford retained, explained this coverage to Pedersen shortly after the tornado.

Because of the damage to her house and belongings, Pedersen claims she had to leave her house with almost nothing besides the clothes she was wearing. Pedersen moved into the Residence Inn located in Salt Lake City while her home was being repaired. According to Pedersen, her room there cost approximately \$100 per day. Pedersen claims that Hartford would not give her an advance for her room expenses but instead told her to charge the bills for her room to her credit card. Pedersen also claims that her room at the Residence Inn included a kitchen but that it took her a while to buy everything she needed in order to cook meals there. Pedersen claims that when she asked Hartford to reimburse her for some of the meals and clothes she had purchased shortly after the tornado, Hartford refused to reimburse her.

Hartford claims that Trich had previously told her that the additional cost of food would only be covered if she was staying somewhere that did not have cooking facilities. According to Hartford, Pedersen was under the mistaken impression that both her additional as well as her non-additional food expenses and other living expenses would be covered. Hartford claims that Pedersen could have retrieved her clothes from where they were being stored instead of buying new clothes.

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<sup>1</sup> Policy, Coverage D.

GAB Robins North America, Inc. (hereinafter, “GAB”) was retained by Hartford to investigate the damage that had been done to Pedersen’s home and to make recommendations to Hartford about the adjustment of Pedersen’s claim. David Trich, who worked for GAB, was assigned to Pedersen’s case. Trich was told to report his findings and make his recommendations to Chris Hunt, who worked for Hartford. Pedersen alleges that Chris Hunt and some of his colleagues at Hartford decided that they would not give her an advance for ALE but that they would reimburse her after she incurred ALE.

According to Pedersen, on September 1, 1999, Trich informed Hunt that Pedersen had spent \$1,151.61 for lodging and recommended that she be reimbursed. Pedersen claims Trich made this same recommendation on September 9, 1999. On October 4, 1999, Pedersen claims that she reminded Trich that she still had not been reimbursed for her ALE. Pedersen claims that she did not receive any ALE reimbursement until October 8, 1999, which was almost two months after the tornado. However, Pedersen claims she only received \$1,151.61 at that time, which was far short of the \$5,397.43 that she had incurred in lodging alone.

According to Pedersen, Trich and Utah Disaster Kleenup (“UDK”) predicted that her home would be restored four and a half months after the date on which the tornado had damaged it. Pedersen claims Trich told Hunt this prediction and that Trich recommended, in writing, on about October 11, 1999 that Pedersen be paid \$12,000 in advance. According to Pedersen, Hartford refused to pay her in advance at the time and did not pay her in advance at any time during the ten months that it took to rebuild her home.

Pedersen claims that it distressed her to have to use her limited amount of money to cover her credit card charges for ALE to avoid late charges. Pedersen claims that because of distress

over being displaced and because of Hartford's delay in paying for her ALE, she began to have trouble sleeping, and her hair began to fall out.

Shortly after the tornado struck, Pedersen apparently spoke to Brian Draper, who worked for UDK. On August 13, 1999, Pedersen apparently authorized UDK to provide emergency services to her home, including packing and storing the contents of her home and securing it from the elements. Pedersen claims UDK provided a bid on September 22, 1999 to Trich regarding the repairs to Pedersen's home. According to Pedersen, the following day, Trich "prepared a report for Hunt detailing the scope of the damage and repairs, and recommended that Hartford reserve a total of Two Hundred Thousand Dollars (\$200,000) for building repairs, personal property losses, and ALE."<sup>2</sup> Pedersen claims that Trich's report also included a recommendation that Hartford pay the amount owed UDK at that time, which was \$20,430.90.

According to Pedersen, Trich reminded Hunt on October 11, 1999 that UDK had not been paid and recommended that Hartford "issue payment to the insured and mortgage holder for the actual cash value of the agreed building estimate, less Frances's deductible, for \$138,753.58."<sup>3</sup> Pedersen claims that Trich recommended on October 20, 1999 that Hartford pay the \$39,384.83 down payment that should have been paid to UDK when it commenced work if Hartford was unwilling to pay the total amount.

According to Pedersen, on November 3, 1999, Trich informed Hunt that the roofing and window contractors were ready to start working and that they required partial payment before commencing work, and Trich recommended that Hartford pay the amount owed UDK at that time

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<sup>2</sup> Plaintiff's Memorandum in Opposition to Motion for Partial Summary Judgment.

<sup>3</sup> *Id.*

as well as the down payment for the roofing and window contractors, together totaling \$68,295.10. Trich apparently recommended that this amount be paid immediately to avoid any delays in the construction. At that time, Trich also apparently informed Hunt that Pedersen had expressed “concern over the delay of both the dwelling repair and additional living expense payments.”<sup>4</sup> Trich apparently also informed Hunt that Pedersen had an attorney and recommended that Hunt “expedite review of the claim and any future payments.”<sup>5</sup>

According to Pedersen, on November 9, 1999, Pedersen’s attorney and one of Pedersen’s neighbors called Hunt and then wrote him a letter. The letter apparently informed Hunt that UDK had told Pedersen on November 5, 1999 that it would have to stop work on Pedersen’s home because it had not received any payments from Hartford. The letter apparently also informed Hunt that Pedersen’s home was exposed to the elements, that snow and rain could be expected, and that “extended displacement for [sic] her home has caused, and will continue to cause, tremendous stress and anxiety to her.”<sup>6</sup> Nevertheless, Pedersen claims that Hartford did not issue payment until November 16, 1999 and that Trich received it the next day. The payment apparently totaled \$62,258.53. Hartford claims that UDK notified Hunt on November 9, 1999 that “the need for payments was becoming critical”<sup>7</sup> but that UDK did not inform Hunt that the work would be stopped if the payments were not made by a certain day. Hartford claims that Hunt requested approval by mail from his home office of a \$52,660 bill that same day. According

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Defendant’s Memorandum in Support of Partial Summary Judgment.

to Hartford, Hunt received approval on November 15, 1999 and issued the payment the next day.

Pedersen claims that because UDK's subcontractors started on another job before receiving Hartford's November 16 payment, UDK could not resume work on Pedersen's home until after Thanksgiving of that year. Pedersen claims that despite Hartford's awareness of the delays caused by its failure to make timely payments, Hartford's next payment to UDK was not until March 20, 2000. Trich apparently reported to Hunt on December 8, 1999 that Pedersen was upset about the delay of one of her ALE payments.

Patricia Augeri, who was responsible for overseeing Hartford's Phoenix region (Hunt's region), apparently E-mailed Hunt on November 9, 1999 and told him that he "had authority since mid-October to pay for work done by Utah Disaster Kleenup."<sup>8</sup> Augeri apparently also told Hunt not to "leave insureds in a position where they are paying ALE out of pocket"<sup>9</sup> and that he could "make an advance against the contents"<sup>10</sup> of a large contents loss. On December 10, 1999, Augeri apparently E-mailed Hunt again and told him he could have paid the actual cash value ("ACV") in mid-October and recommended that he "make payment up to the ACV of the building damage."<sup>11</sup> Nevertheless, Pedersen claims that Hartford continued to make payments piecemeal.

According to Pedersen, before March of 2000, UDK called Hunt and told them it would have to stop work on the home if it did not receive another payment. Because Hartford apparently did not pay UDK at that time, UDK stopped work on the home for about three weeks in March.

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<sup>8</sup> Plaintiff's Memorandum in Opposition to Partial Summary Judgment.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

According to Pedersen, she was “‘physically ill’ and ‘grief stricken’”<sup>12</sup> over this second delay.

Pedersen claims that she was not able to move back into her home until June 17, 2000, which was more than ten months after the tornado.

According to Pedersen, Hartford did not make ALE payments to her in March or in May. Pedersen claims that she did not receive full payment for her documented ALE until August 18, 2000, which was two months after she returned to her home. Pedersen also claims that Hartford has not fully reimbursed her for her personal property losses and that a lien has been placed on her house by UDK because Hartford has not fully paid UDK. Hartford claims that it sent Pedersen \$63,099.69 for the contents of her home but that it did not give her the additional \$23,825 that she requested because she has not adequately documented the loss of some of her personal property.

### **STANDARD OF REVIEW**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, summary judgment “shall be rendered . . . if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”<sup>13</sup> The court must examine the evidence in the light most favorable to the nonmoving party.<sup>14</sup>

The movant bears the initial burden of making a prima facie demonstration of the absence of a genuine issue of material fact and entitlement to judgment as a matter of law. *See Celotex*, 477 U.S. at 323, 106 S. Ct. 2548. In so doing, a movant that will not bear the burden of persuasion at trial need not negate the nonmovant's claim. *See id.* at 325, 106 S.

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<sup>12</sup> *Id.*

<sup>13</sup> Fed. R. Civ. P. 56(c).

<sup>14</sup> *See McKenzie v. Mercy Hosp. of Independence, Kansas*, 854 F.2d 365, 367 (10th Cir. 1988).

Ct. 2548. Such a movant may make its prima facie demonstration simply by pointing out to the court a lack of evidence for the nonmovant on an essential element of the nonmovant's claim. *See id.* If the movant carries this initial burden, the nonmovant that would bear the burden of persuasion at trial may not simply rest upon its pleadings; the burden shifts to the nonmovant to go beyond the pleadings and ‘set forth specific facts’ that would be admissible in evidence in the event of trial from which a rational trier of fact could find for the nonmovant. Fed. R. Civ. P. 56(e).<sup>15</sup>

## ANALYSIS

In order to show intentional infliction of emotional distress, the plaintiff must demonstrate the following:

(i) the defendant's conduct complained of was outrageous and intolerable in that it offended generally accepted standards of decency and morality; (ii) the defendant intended to cause, or acted in reckless disregard of the likelihood of causing, emotional distress; (iii) the plaintiff suffered severe emotional distress; and (iv) the defendant's conduct proximately caused the emotional distress.<sup>16</sup> Among these four elements, the only elements that Hartford challenges in its motion are the “outrageousness” element and the “intentional” element.

In terms of the “outrageousness” element, it is first necessary to determine what conduct is being questioned. Hartford’s conduct can be divided into at least three types of conduct: (1) Hartford’s alleged failure to pay and/or delay in paying Pedersen’s ALE, (2) Hartford’s alleged failure to pay and/or delay in paying the costs of construction on Pedersen’s home, and (3) Hartford’s alleged failure to pay and/or delay in paying Pedersen for her personal property losses.

With regards to Pedersen’s ALE, Hartford argues that because Pedersen had a kitchen in her room at the Residence Inn, her food expenses were no greater than when she was living in her home. Hartford also argues that because Pedersen could have retrieved her warm clothing from

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<sup>15</sup> *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670-71 (10th Cir. 1998).

<sup>16</sup> *Prince v. Bear River Mut. Ins. Co.*, 56 P.3d 524, 535 (Utah 2002) (citations omitted).

where it was being stored, she did not need to buy new clothing. Therefore, Hartford argues that its alleged failure to pay and/or delay in paying for Pedersen's food and clothing was not outrageous and in fact was justified.

Pedersen has not produced evidence that it was necessary for her to buy meals and new clothing rather than make her meals in her room at the Residence Inn and retrieve her clothing from storage. Thus, she has not produced enough evidence to show that Hartford's failure to pay and/or delay in paying for her food and clothing was outrageous. However, Pedersen also argues that Hartford delayed paying for her lodging, which caused her much distress because it forced her to cover the charges with her credit card and then pay for the charges with her limited amount of money.

The Utah Supreme Court has held the following with regards to the "outrageousness" element:

[W]hile the standard for determining whether a plaintiff has experienced emotional distress is subjective, the standard for determining the outrageousness of the alleged conduct is objective. Consequently, a plaintiff claiming intentional infliction of emotional distress must show both that a reasonable person would consider the alleged conduct to be outrageous and that the plaintiff actually experienced subjective severe emotional anguish because of this objectively outrageous conduct.<sup>17</sup>

It is important to note that this objective test of outrageousness is not based on whether a reasonable person would regard the defendant's conduct as outrageous if the reasonable person was placed in the plaintiff's position. Instead, "[g]enerally, the case [of intentional infliction of emotional distress] is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim,

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<sup>17</sup> *Retherford v. AT & T Communications of Mt. States, Inc.*, 844 P.2d 949, 976 (Utah 1992).

'Outrageous!'"<sup>18</sup> In addition, Restatement Second of Torts states the following:

The extreme and outrageous character of the conduct may arise from the actor's knowledge that the other is peculiarly susceptible to emotional distress, by reason of some physical or mental condition or peculiarity. The conduct may become heartless, flagrant, and outrageous when the actor proceeds in the face of such knowledge, where it would not be so if he did not know.<sup>19</sup>

Pedersen has produced evidence in the form of the deposition of David Trich, an independent adjuster who was retained by Hartford, that Trich informed Hartford twice in the early part of September, 1999 that he recommended that Hartford reimburse Pedersen for her lodging. Trich's deposition also supports Pedersen's claim that Trich did not receive a payment from Hartford for Pedersen's lodging until October 8, 1999, which was almost two months after the tornado. Moreover, based on Trich's deposition, the amount of this first payment was far less than the amount that Pedersen had incurred in lodging by that time. Trich also informed Hartford that the restoration of Pedersen's home would take at least four and a half months and recommended, in writing, on about October 11, 1999 that Hartford pay Pedersen \$12,000 in advance for living expenses. Despite these recommendations, Hartford refused to pay Pedersen in advance at any time during the ten months that Pedersen was displaced from her home.

According to Pedersen's deposition and affidavit, she became very distressed over the delays and began to have trouble sleeping and began to lose her hair. However, Pedersen has not produced evidence that Hartford knew she was distressed until November 3, 1999. Pedersen implies that Hartford knew or should have known about her distress and her susceptibility to

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<sup>18</sup> *Id.* at 978 n. 19 (quoting Restatement (Second) of Torts § 46, cmt. d (1965) (emphasis added)).

<sup>19</sup> Restatement (Second) of Torts § 46, cmt. f (1965).

distress much earlier in light of the fact that she was an eighty-year-old widow who had been in a tornado, whose home had been seriously damaged by the tornado, who had been displaced from her home, and who had a limited amount of money to cover her lodging expenses. Nevertheless, Pedersen has not produced evidence that Hartford knew about her distress until November 3, 1999 when Trich informed Hartford that Pedersen was concerned about the delays in her ALE payments. Then, on November 9, 1999, Pedersen's attorney wrote Hartford a letter, which explained the distress that Pedersen had experienced and her susceptibility to distress. Trich informed Hartford again in December that Pedersen was distressed over delays in ALE payments.

Pedersen has produced evidence that Patricia Augeri, Hunt's supervisor, informed him on November 9, 1999 not to let Pedersen pay ALE out of pocket. However, Pedersen has produced evidence that Hartford did not pay Pedersen for her lodging in March or May of 2000 and did not fully reimburse her for her lodging until two months after she moved back into her home.

The court finds, with regards to Hartford's delays in paying for Pedersen's lodging, that Pedersen has produced enough evidence to show that Hartford's conduct was outrageous. Taking the evidence in the light most favorable to her, Pedersen has produced evidence that:

- Hartford repeatedly delayed paying for Pedersen's lodging,<sup>20</sup>
- Hartford apparently had no legitimate reason to delay Pedersen's lodging payments,<sup>21</sup>

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<sup>20</sup> See *Beck v. Farmers Ins. Exchange*, 701 P.2d 795, 801 (Utah 1985) (“[T]he implied obligation of good faith performance contemplates, at the very least, that the insurer will diligently investigate the facts to enable it to determine whether a claim is valid, will fairly evaluate the claim, and will thereafter act promptly and reasonably in rejecting or settling the claim.”).

<sup>21</sup> Compare with *Callioux v. Progressive Insurance Co.*, 745 P.2d 838 (Utah App. 1987) (involving a legitimate delay by an insurer in paying claim because insured was suspected of arson).

- Hartford refused to follow the recommendations of Trich, Hunt refused to follow the recommendations of Augeri,
- Hartford had notice at least by November 3, 1999, that the delays were distressing to Pedersen, and
- Hartford had notice at least by November 9, 1999, that Pedersen was susceptible to distress.<sup>22</sup> It is possible that “the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, ‘Outrageous!’”<sup>23</sup>

The second type of conduct attributed to Hartford is its alleged failure to pay and/or delay in paying the costs of construction on Pedersen’s home. Hartford admits that it did not issue any payments to UDK until November 16, 1999, which was approximately three months after UDK started working on Pedersen’s house. Pedersen has produced evidence in the form of Trich’s deposition that Trich recommended on September 23, 1999, that Hartford pay UDK for the work that UDK had completed at that time. Pedersen has also produced evidence that on October 11, 1999, Trich recommended to Hunt that Hartford pay the actual cash value of the total construction estimate minus Pedersen’s deductible. Based on Trich’s deposition, Trich recommended on October 20, 1999 that Hartford pay the down payment to UDK. On November 3, 1999, Trich recommended that Hartford pay the amount owed for the work that had been completed at that point as well as the down payment for the roofing and window contractors. At that time, Trich

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<sup>22</sup> See Restatement (Second) of Torts § 46, cmt. f (1965).

<sup>23</sup> *Retherford*, 844 P.2d at 978 n. 19 (quoting Restatement (Second) of Torts § 46, cmt. d (1965) (emphasis added)).

informed Hartford that the roofing and window contractors needed part of their payment before they would begin working and told Hartford to make the payment immediately to prevent delays in construction. Trich also informed Hartford that Pedersen was concerned about the delays in payment to UDK, which was, once again, apparently the first time Hartford was informed about Pedersen's distress. Finally, Trich recommended that Hartford "expedite review of the claim and any future payments."<sup>24</sup> Hartford has admitted that UDK notified Hunt on November 9, 1999 that "the need for payments was becoming critical."<sup>25</sup> Pedersen has produced evidence that on November 9, 1999, Pedersen's attorney informed Hartford in writing that UDK had informed Pedersen on November 5, 1999 that it would have to stop work on her home because of the delay in payments, that the home was exposed to the elements, and that Pedersen was very distressed and was susceptible to distress. Hartford claims that it took about nine days for Trich to receive the payment because Hunt had to request approval of the payment by mail from his home office. However, Pedersen has produced evidence that Augeri, Hunt's supervisor who worked at the home office, told Hunt on November 9, 1999 that he "had authority since mid-October to pay for work done by Utah Disaster Kleenup. . . ."<sup>26</sup> She also told him he could "make an advance against the contents"<sup>27</sup> of a large contents loss. Pedersen has produced evidence in the form of Brian Draper's deposition that UDK stopped work because of Hartford's three month delay in payment. Based on Draper's deposition, UDK informed both Trich and Hunt that it needed to be paid.

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<sup>24</sup> Plaintiff's Memorandum in Opposition to Partial Summary Judgment.

<sup>25</sup> Defendant's Memorandum in Support of Partial Summary Judgment.

<sup>26</sup> Plaintiff's Memorandum in Opposition to Partial Summary Judgment.

<sup>27</sup> *Id.*

Because of the delay in payment, UDK could not resume work on Pedersen's home until after Thanksgiving of 1999. Despite the delays in construction that Hartford had caused, Hartford apparently did not make another payment to UDK until March 20, 2000.

Pedersen has produced evidence that Augeri told Hunt on December 10, 1999, that he could have paid the actual cash value of the total building repairs in mid-October and told him that because he did not do so in October that he should do so at that time.

Pedersen has produced evidence that UDK warned Hartford before March of 2000, that it needed another payment in order to continue working on Pedersen's home. Because UDK did not receive payment in time, it stopped working for three weeks in March of 2000. Pedersen was not able to move back into her home until more than ten months after the tornado. Pedersen claims, without evidence, that a lien has been placed on her house because Hartford has never fully paid UDK.

The court finds, with regards to Hartford's delays in paying the costs of construction on Pedersen's home, that Pedersen has produced enough evidence to show that Hartford's conduct was outrageous. The court finds that because Pedersen has produced evidence that Hartford repeatedly delayed paying the costs of construction,<sup>28</sup> Hartford's long delays caused the construction to stop twice for about three weeks each time, Hartford had either actual notice or constructive notice that UDK would stop working if Hartford continued to delay payments,

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<sup>28</sup> See *Beck*, 701 P.2d at 801 (“[T]he implied obligation of good faith performance contemplates, at the very least, that the insurer will diligently investigate the facts to enable it to determine whether a claim is valid, will fairly evaluate the claim, and will thereafter act promptly and reasonably in rejecting or settling the claim.”).

Hartford apparently had no legitimate reason to delay the construction payments,<sup>29</sup> Hartford refused to follow the recommendations of Trich, Hunt refused to follow the recommendations of Augeri, Hartford had notice at least by November 3, 1999, that the delays were distressing to Pedersen, and Hartford had notice by at least November 9, 1999, that Pedersen was susceptible to distress,<sup>30</sup> it is possible that “the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'"<sup>31</sup>

The third type of conduct attributed to Hartford is its alleged failure to pay and/or delay in paying Pedersen for her personal property losses. Because it has already been shown that Pedersen has met her burden with regards to the “outrageousness” element, it is not necessary to determine whether she has produced enough evidence to show outrageousness with regards to the third type of conduct.

The only other element of the intentional infliction of emotional distress cause of action that Hartford challenges in its motion is the “intentional” element. Hartford argues that its conduct was not intentionally aimed at causing Pedersen emotional distress. However, the “intentional” element can be met if the defendant “acted in reckless disregard of the likelihood of causing” emotional distress.<sup>32</sup> Hartford does not argue that it did not act “in reckless disregard of

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<sup>29</sup> *Compare with Callioux*, 745 P.2d 838 (involving a legitimate delay by an insurer in paying claim because insured was suspected of arson).

<sup>30</sup> *See* Restatement (Second) of Torts § 46, cmt. f (1965).

<sup>31</sup> *Retherford*, 844 P.2d at 978 n. 19 (quoting Restatement (Second) of Torts § 46, cmt. d (1965) (emphasis added)).

<sup>32</sup> *Retherford*, 844 P.2d at 978 n. 19; *see also* Restatement (Second) of Torts § 46, cmt. i (1965).

the likelihood of causing” emotional distress.<sup>33</sup> Even if Hartford had denied that it acted recklessly, the court finds that Pedersen has produced enough evidence to show recklessness because she has provided evidence that Hartford continued, without any apparent reason, to delay making payments to Pedersen and UDK even though it knew by at least November 9, 1999 that the delays had caused Pedersen emotional distress and that she was susceptible to distress.<sup>34</sup>

### CONCLUSION

The court finds that Pedersen has made a prima facie case of intentional infliction of emotional distress. Thus, there are genuine issues as to material facts with regards to Pedersen’s intentional infliction of emotional distress claim. Hartford’s motion for partial summary judgment is DENIED. Because the issues discussed in this order would not be clarified by oral argument, the court strikes the hearing set for August 31, 2004.

DATED this 9<sup>th</sup> day of August, 2004.

BY THE COURT:

/S/

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Paul G. Cassell  
United States District Judge

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<sup>33</sup> *Id.*

<sup>34</sup> *See id.*

United States District Court  
for the  
District of Utah  
August 9, 2004

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:01-cv-00398

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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